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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/552,743	04/18/2000	Roger P. Jackson	99.198	2761

7590
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Kansas City, MO 64112

11/25/2003

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N . 09/552,743	Applicant(s) Roger Jackson	
	Examiner Brian E Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the expansion member being *anteriorly accessible* and operably moved along said post by *anterior rotation of at least one of said expansion member and said post* was not found in the written disclosure.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Aebi et al. (WO 99/07312). Fig. 1 shows an implant for stabilizing the vertebrae with an open chamber as seen and apertures **22** for bone fragments. Fig. 3 shows an expansion cap **26** and an implant end cover **18** which has upper and lower support surfaces that are elongate and linear, that engages vertebrae. It can also be seen that the implant and expansion cap have thread structure (**28,26**) to lock together said cap and implant. It can also be seen the cap has a recess **56**.

Claims 40,41 are rejected under 35 U.S.C. 102(b) as being anticipated by Lahille et al. (5554191). Lahille shows (Fig. 6) a post **36** mounted in the posterior wall **33** of a vertebral implant to pull an expansion member posteriorly inwards. It can also be seen the expansion member **37** is located anteriorly between the implant's upper and lower walls **31,32**. Fig. 15 shows a fastener **363** to secure expansion member to post and the

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expansion member is sized and shaped to remain in contact with the upper and lower walls in close proximity of their respective anterior ends.

Claims 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Nolan (6117174). Nolan discloses an implant (Fig. 6a) for implanting between a adjacent vertebrae and is adapted to promote bone growth, col. 4, lines 40-46. The inner threads **80** secure the end cover to the implant. It can also be seen there is an implant end cover **82** with generally flat, elongate parallel surfaces that provide support to the vertebrae as shown in Fig. 17. Fig. 16, shows the implant is cylindrical.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan '174 in view of Lahille et al. '191. Nolan is explained supra. Figs. 2 and 18 show a plurality of radial openings for permitting bone ingrowth fragments to enter cavity. However, Nolan does not disclose the implant with a post mounted in the posterior wall. Lahille et al. teach (Fig. 6) a post **36** that is mounted in the implant's posterior wall **33**. It would have been obvious to one of ordinary skill in the art to use a post as taught by Lahille to couple with the expansion member of Nolan it prevents the expansion member from getting dislodged or forced from between the upper and lower walls of the implant under compressive loads.

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Response to Arguments

Applicant's arguments with respect to claims 31,33,37,40 etc. have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 9am to 6:30pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Brian E. Pellegrino

TC 3700, AU 3738

Bruce Snow Primary Examiner

